

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.: 05-10448-GAO

JOANNE M. ROYER,)
)
Plaintiff,)
)
v.)
)
BLUE CROSS BLUE SHIELD)
OF MASSACHUSETTS, INC., et al.)
)
Defendants.)

BLUE CROSS'S MOTION TO STRIKE

Pursuant to Fed. R. Civ. P. 12(f), defendants Blue Cross and Blue Shield of Massachusetts, Inc. Cross and Blue Shield of Massachusetts, Inc. Omnibus Welfare Benefit Plan (jointly, "Blue Cross") move to strike the jury demand and Count IV in the Second Amended Complaint served by plaintiff Joanne Royer ("Royer").

This is essentially an action for disability payments allegedly owed under an employee benefits plan. Plaintiff is a former Blue Cross at-will employee who brings claims under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et. seq. ("ERISA"). Trial by jury is not available for the ERISA claims raised by Plaintiff, and Count IV merely states a claim for attorneys fees under ERISA, which is relief available to Ms. Royer under Counts I and II should she prevail on those claims.

Blue Cross relies on its supporting memorandum, filed herewith.

Wherefore, the Court should grant Blue Cross's motion to strike.

BLUE CROSS REQUESTS ORAL ARGUMENT ON ITS MOTION.

By Their Attorneys,

/s/ Joseph Halpern

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